

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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DEBBIE HOWARD, on behalf of	)	
herself and all similarly	)	
situated persons,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 06-2833-JPM
	)	
WILKES & MCHUGH, P.A., a Florida	)	
professional association;	)	
JAMES L. WILKES, II, a Florida	)	
citizen; and TIMOTHY C. MCHUGH,	)	
a California citizen,	)	
	)	
Defendants.	)	

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ORDER ADOPTING REPORT AND RECOMMENDATION;  
ORDER DENYING MOTION TO DISQUALIFY COUNSEL FOR PLAINTIFFS;  
ORDER DENYING APPEAL OF MAGISTRATE JUDGE DECISION AS MOOT

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Pending before the Court is the Report and Recommendation of Magistrate Judge Tu M. Pham, submitted November 18, 2007 (Doc. 124), recommending that the Motion to Disqualify Counsel for Plaintiffs be denied. Also pending before the Court is Defendant Wilke's and McHugh, P.A.'s (the "Wilkes firm") appeal of the Magistrate Judge's Order Granting in Part and Denying in Part without Prejudice Motion for Protective Order, filed June 28, 2007 (Doc. 91). The Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety, DENIES the Motion to

Disqualify, and DENIES the Appeal of the Magistrate Judge Decision as moot.

Frank L. Watson, III and William F. Burns of Watson Burns, LLC (the Watson firm) currently represent Plaintiffs. The Magistrate Judge found that (1) the representation of nursing home clients by Frank Watson, William Burns or the Watson firm does not independently or in combination prohibit the Watson firm from representing Plaintiffs in the present litigation under either Tenn. Sup. Ct. R. 1.7(b) or 1.9; (2) the Watson firm has not violated Tenn. Sup. Ct. R. 4.2 by communicating with Lora Newson or Eddie Newson; (3) the Watson firm has not violated Tenn. Sup. Ct. R. 4.4 by advertising their lawsuit on the website "www.layersandsettlements.com," by their engaging an expert witness with alleged nursing home industry connections, by contacting the Wilkes firm's clients, or by contacting Blair Evans, a former employee of the Wilkes firm; (4) Burns is not a "necessary witness" in this case due to his former firm's representation in Patzsch v. Am. Health Ctrs., Inc., et al., Cause No. CT-002355-00-3, and so need not be disqualified pursuant to Tenn. Sup. Ct. R. 3.7; and (5) the communications between Plaintiffs' expert Harold G. Walter and Shelby County Probate Court Judge Robert Benham and retired Judge Donn Southern

do not constitute violations of either Tenn. Sup. Ct. R 8.4 or Tenn. Sup. Ct. R. 10, TCJC 3.

The Magistrate Judge recommends that the Motion to Disqualify be denied. No objections to the Report and Recommendation have been filed, and the time for filing objections has since expired. Upon de novo review of the Magistrate Judge's recommendation, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety and DENIES the Motion to Disqualify Counsel for Plaintiffs. In addition, because the Wilkes firm's appeal of the Magistrate Judge Decision is based on the argument that pending determination of their Motion to Disqualify the Watson firm the documents that were the subject of the protective order should not be disclosed, (see generally, Def.'s Objections 1-3), and because the Court has denied the Motion to Disqualify, the appeal of the Magistrate Judge Decision is DENIED as moot.

So ORDERED this 3rd day of December, 2007.

/s/ JON P. McCALLA

UNITED STATES DISTRICT JUDGE